1. S.B.CIVIL WRIT PETITION NO.2918/2006.
(Rathore Bulk Carrier Vs. H.P.C.L. & Others.)
2. S.B.CIVIL WRIT PETITION NO.2920/2006.
(Shekhawat Oil Carrier Vs. H.P.C.L. & Others.)
3. S.B.CIVIL WRIT PETITION NO.2996/2006.
(Baida Lal Vs. H.P.C.L. & Others.)
4. S.B.CIVIL WRIT PETITION NO.2998/2006.
(Nawal Kishore Sharma Vs. H.P.C.L. & Others.)
5. S.B.CIVIL WRIT PETITION NO.3000/2006.
(Narayan Lal Vs. H.P.C.L. & Others.)
6. S.B.CIVIL WRIT PETITION NO.3002/2006.
(Ayush Bulk Carrier Vs. H.P.C.L. & Others.)
7. S.B.CIVIL WRIT PETITION NO.3006/2006.
(Goverdhan Transport Vs. H.P.C.L. & Others.)
8. S.B.CIVIL WRIT PETITION NO.2994/2006.
(Ram Gopal Sharma Vs. H.P.C.L. & Others.)
9. S.B.CIVIL WRIT PETITION NO.2992/2006.
(Tarun Bulk Carrier Vs. H.P.C.L. & Others.)

05.05.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Yogesh Kumar Sharma, for the petitioners.
Mr.S.Kasliwal]
Mr.K.Verma] for the respondent-Corporation.

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In these writ petitions, the facts which require consideration are that the petitioners are the owners of tankers/trucks used for the transportation of petroleum products which were hired by the respondent-Corporation. The last contract expired on 30.09.2005 and consequently the respondent-Corporation issued a notice inviting tenders from intending carriers/transporters for bids to be offered for transportation work for a period of two years commencing from 01.10.2005 to 30.09.2007.

Learned counsel for the petitioners submit that petitioners submitted their bids on the prescribed tender forms

and in pursuance thereof the petitioners as in the case of S.B.Civil Writ Petition No.2918/2006 received a communication (Annexure-2) from the non-petitioner dated 20.10.2005 whereby the respondent-Corporation offered them certain rates for transportation work. The petitioners' case is that these rates which were offered vide Annexure-2 which are referred to as L-2 rates were not acceptable to the petitioner and, as such, the petitioners were offered vide Annexure-3 dated 25.10.2005 the L-3 rates which were higher than the L-2 rates. The aforesaid rates were also not acceptable to the petitioners and as such the petitioners were offered L-4 rates (technically known to the parties) vide Annexure-4 dated 27.10.2005. The petitioners' further case is that vide Annexure-5 dated 29.10.2005, the petitioners communicated their acceptance for the L-4 rates for transportation of the petroleum products of the respondent-Corporation and accordingly the petitioners were carrying on the work of transportation of the petroleum products.

The grievance of the petitioners is that after having started the work in pursuance of the aforesaid offers and their acceptance communicated by Annexure-5, the respondents unilaterally stopped the transportation of the work products w.e.f. 01.04.2006. It is on account of the above reason that the petitioners have come with these writ petitions before this court with a prayer that the respondents be directed to execute the agreement and offer the work in accordance with the tender.

Notices were issued to the respondents and the respondents have filed their reply.

In nutshell, the case of the respondents is that in fact no contract had been entered into with the petitioners and it is only the previous existing agreement which was decided to be extended as per the letter which has been filed as Annexure-R/1 dated 21.03.2006 wherein it is stated that only adhoc work was being taken from the petitioners during the aforesaid period between October, 2005 to 31st March, 2006. Regarding the aforesaid submission of the learned counsel for the respondents, it was put to the learned counsel for the parties as to whether there were any communications made by the respondent-Corporation to the petitioners between October, 2005 to this effect or in the letters Annexures-2, 3 and 4 where new rates were being offered to the petitioners to the effect that the previous contract which expired on 30.09.2005 was being extended and that the new rates which were being offered were for the extended period and not for the period from October, 2005 to 2007 for which the N.I.T. had been issued and for which the bids had been made. The learned counsel for the non-petitioner has candidly admitted that the communications do not make any such mention as was done in 2004 vide Annexure-1.

Having heard learned counsel for the parties and having perused the record more particularly the documents which have been filed and relied upon by the parties, it is clear that after 30th September, 2005, the previous contract of the

petitioners had come to an end. No document or letter was communicated to the petitioners after 30.09.2005 by the respondents that they were intending only to extend their contract which had come to an end on 30.09.2005. Moreover, it is also apparent from the record that respondent-Corporation was negotiating the contract with the petitioners and for that purpose the respondents mentioned in Annexure-3 that the L-1 rates were offered. The documents Annexures-2, 3 and 4 clearly made a reference to the tender of 2005 for the supply of POL transportation from Sanganer Depot for which the notice inviting tender by the respondent-Corporation was issued. The opening sentence of these letters Annexures-2, 3 and 4 are "This has reference to your response to the Industry Public Tender for bulk POL Transportation Tender No.RSO/IND/POL/Bulk/2005". It was in pursuance of the aforesaid offers, that the petitioners gave their consent vide Annexure-5 accepting the rates offered for the Transportation work under the tender of 2005. Thus, on account of the offers which were made by the respondent-Corporation to the petitioners it was clear that the parties were clearly aware that whatever negotiations were being made, were for the purpose of bulk transportation at Sanganer Depot and was in respect of the tender issued in the year 2005 for a period of two years commencing from October, 2005 to 30th September, 2007.

Learned counsel for the respondent-Corporation has sought to submit that as per the condition of notice inviting tender, more particularly condition No.E-1 to 7 and G-1 the contract did not stand concluded till the agreement was

executed. So far as the above submission of the learned counsel for the respondent-Corporation is concerned, suffice it to say that as has been admitted earlier by the respondent-Corporation, no order or communication was sent by the respondent-Corporation to any of the petitioners that the respondent-Corporation only intended to extend the earlier contract and the work which was being carried out by the petitioners w.e.f. October, 2005 was not in pursuance of the new contract but by way of extension of the earlier contract and for this purpose, learned counsel for the respondent-Corporation also sought to rely upon Annexure-R/2 to show that petitioners were being paid only on the basis of the rates which were prevalent under the previous contract.

So far as the above submission is concerned, as has been mentioned above, it is not the case of the respondent-Corporation that at any point of time, the respondent-Corporation informed the petitioners that the previous contract alone was being extended and that the negotiations which were being made and the work of transportation of the goods which was being carried on by the petitioners was not in pursuance of the new contract or in pursuance of the notice inviting tender issued for the period 2005 upto 2007 but under the expired contract. So far as the question with regard to the rates at which the payments was being made, the parties may at any point of time raise the dispute with regard to their right to receive the payment for the difference of the amount made by the respondent-Corporation if the petitioners are not satisfied with the above payment which has been made to them. Apart from the

above the dates for which the bills have been raised are between 07.10.2005 to 27.10.2005 in Annexure-R/2 when the rates for the new contract were being finalised by offers Annexures-2, 3 and 4 and accepted vide Annexure-5 on 29.10.2005.

When a Corporation particularly one owned and under the control of the Government of India, issues the notices and invites tenders and negotiates in pursuance of the aforesaid by offering more favourable rates and finally the rates of L-4 are accepted by the transporters who agree to do the work of supply of an essential commodity, it is only legitimate for the petitioners to contend that all the negotiations having been made and the work having been started, the same is in pursuance of the new contract and the work is being offered in pursuance of the new tender for 2005 to 2007 and not by way of extension as no communication or letter to the effect was given to the petitioners that the work was being offered work by way of extension of the earlier contract which had expired on 30.09.2005 the doctrine of legitimate expectation would in the facts and circumstances come into play and unless the respondents had clearly intimated to the petitioners that the work being offered to them was not under the new contract in the light of the facts arising out of the Annexures-2, 3 and 4 clearly indicate that it was in pursuance of the new tender of 2005.

In that view of the matter, these writ petitions are liable to be accepted and are consequently hereby allowed. The

petitioners are entitled to the issuance of writ directing the respondents to execute the agreement in pursuance of the notice inviting tender No.RSO/IND/POL/BULK/2005 EX-SANGANER DEPOT for which the petitioners submitted their bids and for being assigned the work in terms thereof.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.